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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,271	03/01/2004	John R. Burgeson	33075.71	9536
32300	7590	12/02/2005	EXAMINER	
BRIGGS AND MORGAN P.A. 2200 IDS CENTER 80 SOUTH 8TH ST MINNEAPOLIS, MN 55402			KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/790,271

Applicant(s)

BURGESON, JOHN R.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6, 7 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5 and 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/8/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed September 12, 2005 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. Claims 3, 6, 7, 13 and 14-16 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 25, 2005. Species J, figure 13 was elected.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1, 2, 4, 5 and 8-12 rejected under 35 U.S.C. 102(b) as being anticipated by Fuld et al. (2,251,734).

Fuld discloses a temperature activated scent wick comprising: a container 56; a cap (bottom base of container 56); a temperature buffering scent reservoir 86, an absorbent scent wick 78.

5. Claims 1, 2, 4, 5 and 8-12 rejected under 35 U.S.C. 102(b) as being anticipated by Bundy (2,991,517).

Bundy discloses a temperature activated scent wick comprising: a container D; a cap 32; a temperature buffering scent reservoir 33, an absorbent scent wick B.

6. Claims 1, 2, 4, 5 and 8-12 rejected under 35 U.S.C. 102(b) as being anticipated by Ohayon (5,810,253).

Ohayon discloses a temperature activated scent wick comprising: a container 32; a cap 33; a temperature buffering scent reservoir 35, 36, 38, an absorbent scent wick 40.

### ***Response to Arguments***

7. Applicant's arguments filed September 12, 2005 have been fully considered but they are not persuasive.

Applicant argues that Fuld does not disclose a temperature buffering scent reservoir wherein increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir onto the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent. Applicant further argues that the valve 64 prevents Fuld from operating in a temperature buffering manner. Applicant is relying on functional recitation which merely requires the ability to so perform. Second, the rejection is based on Fuld's embodiment shown in figure 6 which has no valve. The temperature buffering scent reservoir was identified in the Office action as element 86 which is only found in figure 6.

Applicant argues that Bundy and Ohayon do not teach the functional recitation of temperature buffering. Applicant is absolutely correct. Bundy and Ohayon do not explicitly, in text, disclose the function recitation made by applicant, but Bundy and Ohayon have the capability to perform such operation.

### ***Conclusion***


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK